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ORA Talus 90, LLC

11
12 UNITED STATES DISTRICT COURT
13 FOR THE WESTERN DISTRICT OF WASHINGTON
14 AT SEATTLE

15 TALUS 7 & 8 INVESTMENT, LLC,

16 Plaintiff,

17 v.

18 ORA TALUS 90, LLC,

19 Defendant.

NO. 2:16-cv-01502-JLR

ANSWER TO COMPLAINT

20
21 ORA TALUS 90, LLC (“ORA Talus”), by its attorneys, for its answer to the
22 “Complaint for Declaratory Relief and Breach” herein (the “Complaint”), alleges:

23 1.1 Admits the allegations contained in paragraph “1.1” of the Complaint.

24 1.2 Admits the allegations contained in paragraph “1.2” of the Complaint.
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1 2.1 Denies each and every allegation contained in paragraph “2.1” of the Complaint,
2 except admits that plaintiff alleges the purported jurisdiction and venue of the Superior Court
3 for the State of Washington in the County of King.

4 3.1 Denies each and every allegation contained in paragraph “3.1” of the Complaint,
5 except admits that plaintiff and ORA Talus executed that certain Construction and Utility
6 Easement made as of August 7, 2015, a purported copy of which is annexed to the Complaint
7 as Exhibit A, and respectfully refers to said Construction and Utility Easement for the true and
8 accurate terms thereof.

9 3.2 Denies each and every allegation contained in paragraph “3.2” of the Complaint,
10 except admits that plaintiff and ORA Talus executed that certain Construction and Utility
11 Easement made as of August 7, 2015, a purported copy of which is annexed to the Complaint
12 as Exhibit A, and respectfully refers to said Construction and Utility Easement for the true and
13 accurate terms thereof.

14 3.3 Upon information and belief, admits the allegations of paragraph “3.3” of the
15 Complaint.

16 3.4 Denies that it has any knowledge or information sufficient to form a belief with
17 respect to the truth of the allegations contained in paragraph “3.4” of the Complaint.

18 3.5 Denies each and every allegation contained in paragraph “3.5” of the Complaint,
19 except admits that Christopher I. Brain, one of ORA Talus’s counsel, sent a letter to Keith
20 Niven of the City of Issaquah, dated August 19, 2016, and respectfully refers to said letter for
21 the true and accurate terms thereof.

22 3.6 Denies that it has any knowledge or information sufficient to form a belief with
23 respect to the truth of the allegations contained in paragraph “3.6” of the Complaint.

24 3.7 Denies that it has any knowledge or information sufficient to form a belief with
25 respect to the truth of the allegations contained in paragraph “3.7” of the Complaint.
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3.8 Denies each and every allegation contained in paragraph “3.8” of the Complaint, except admits that John C. Dippold, one of plaintiff’s counsel, sent a letter to Christopher I. Brain, one of ORA Talus’s counsel, dated September 2, 2016, a purported copy of which is annexed to the Complaint as Exhibit B, and respectfully refers to said letter for the true and accurate terms thereof.

AS AND FOR AN ANSWER

TO THE “FIRST CLAIM”

ALLEGED IN THE COMPLAINT

4.1 As and for its response to paragraph “4.1” of the Complaint, repeats and realleges each and every response to paragraphs “1.1” through “3.8”, inclusive, of the Complaint with the same force and effect as if said responses were fully repeated and realleged at length herein.

4.2 Denies each and every allegation contained in paragraph “4.2” of the Complaint.

4.3 Denies each and every allegation contained in paragraph “4.3” of the Complaint.

AS AND FOR AN ANSWER

TO THE “SECOND CLAIM”

ALLEGED IN THE COMPLAINT

5.1 As and for its response to paragraph “5.1” of the Complaint, repeats and realleges each and every response to paragraphs “1.1” through “4.3”, inclusive, of the Complaint with the same force and effect as if said responses were fully repeated and realleged at length herein.

5.2 Denies each and every allegation contained in paragraph “5.2” of the Complaint.

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AS AND FOR AN ANSWER

TO THE "THIRD CLAIM"

ALLEGED IN THE COMPLAINT

6.1 As and for its response to paragraph "6.1" of the Complaint, repeats and realleges each and every response to paragraphs "1.1" through "5.2", inclusive, of the Complaint with the same force and effect as if said responses were fully repeated and realleged at length herein.

6.2 Denies each and every allegation contained in paragraph "6.2" of the Complaint.

AS AND FOR A

FIRST AFFIRMATIVE DEFENSE

7. The Complaint and each and every claim for relief and cause of action alleged therein fail to state a claim upon which relief may be granted against ORA Talus.

AS AND FOR A

SECOND AFFIRMATIVE DEFENSE

8. Plaintiff's claims against ORA Talus, if any, are barred by plaintiff's laches.

AS AND FOR A

THIRD AFFIRMATIVE DEFENSE

9. Plaintiff's claims against ORA Talus, if any, are barred by plaintiff's unclean hands.

AS AND FOR A

FOURTH AFFIRMATIVE DEFENSE

10. Plaintiff's claims against ORA Talus, if any, are barred by the parol evidence rule.

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1 AS AND FOR A

2 **FIFTH AFFIRMATIVE DEFENSE**

3 11. Plaintiff's claims against ORA Talus, if any, are barred by plaintiff's failure to
4 comply with obligations with which plaintiff was required to comply under the documents
5 which form the basis for the Complaint herein, and that compliance was a condition precedent
6 to the relief plaintiff seeks in the Complaint.

7 AS AND FOR A

8 **SIXTH AFFIRMATIVE DEFENSE**

9 12. Plaintiff expressly and/or impliedly waived its right, if any, to prosecute or
10 recover as against ORA Talus upon each and every claim for relief and cause of action alleged
11 in the Complaint.

12 AS AND FOR A

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 13. Plaintiff is equitably estopped from prosecuting or recovering as against ORA
15 Talus upon each and every claim for relief and cause of action alleged in the Complaint.

16 AS AND FOR A

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 14. Plaintiff's damages, if any, were fully or partially caused by acts and/or
19 omissions of plaintiff and/or plaintiff's affiliates, agents or representatives or third parties who
20 were not the employees, agents or representatives of ORA Talus.

21 15. By reason of the foregoing, any damages or liability assessed against ORA
22 Talus must be reduced, in whole or in part, by the damages caused by plaintiff and/or plaintiff's
23 affiliates, agents or representatives and/or such third parties.

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1 AS AND FOR A

2 **NINTH AFFIRMATIVE DEFENSE**

3 16. Damages incurred by ORA Talus as a result of actions or failures to act by
4 plaintiff must be set off against damages, if any, that ORA Talus is found to owe to plaintiff.

5 AS AND FOR A

6 **TENTH AFFIRMATIVE DEFENSE**

7 17. In any event, the failure of plaintiff to mitigate its damages, if any, bars plaintiff
8 from the recovery of damages or other relief against ORA Talus.

9 WHEREFORE, defendant ORA Talus demands that judgment be entered herein (a)
10 dismissing each and every claim for relief and cause of action alleged against defendant ORA
11 Talus in the Complaint; (b) awarding to defendant ORA Talus, and ordering plaintiff to pay to
12 defendant ORA Talus, defendant ORA Talus's costs and disbursements herein, including
13 reasonable attorneys' fees; and (c) granting defendant ORA Talus such other and further relief
14 as to this Court seems just and proper.

15 DATED this 25th day of October, 2016

16 TOUSLEY BRAIN STEPHENS PLLC

17 By: /s/Christopher I. Brain

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23 By: /s/Cynthia M. Cohen

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27 *Attorneys for Defendant, ORA Talus 90, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

DATED at Seattle, Washington, this 25th day of October, 2016.

/s/Christopher I. Brain

Christopher I. Brain, WSBA #5054

cbrain@tousley.com

Attorneys for Defendant, ORA Talus 90, LLC

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